

APPROVED: 4/17/19

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
MARCH 20, 2019**

The Regular meeting of the Consolidated Zoning Board of Appeals was held in the Town Hall, Highland Falls, New York, on Wednesday, March 20, 2019, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

Ray Devereaux, Deputy Chairman
Joe McCormick
Joe Murphy

Absent

Jack Jannarone, Chairman
Tony Galu

Alyse D. Terhune, Esq., Board Attorney

ALSO PRESENT: Rich Sullivan, Town Board Liaison, Donal Ryan, Thomas Isenbek and Joanne Isenbek.

At 7:00 P. M., the meeting was opened with the Pledge to the Flag.

MR. DEVEREAUX: I will open the Consolidated Zoning Board of Appeals meeting for Wednesday, March 20, 2019. All Members are present except Mr. Jannarone and Mr. Galu. The first item on the agenda is to approve the February 22, 2019 Minutes. Are there any comments?

A Motion was made to approve the Minutes for February 22, 2019.

Motion: Mr. McCormick Seconded: Mr. Murphy Approved.

69 Schneider Avenue, Highland Falls, NY Area Variance

MR. DEVEREAUX: May we have a motion to open the Public Hearing?

At 7:01 P. M., a motion was made to Open the Public Hearing.

Motion: Mr. McCormick Seconded: Mr. Murphy Approved

MR. DEVEREAUX: The Public Hearing is for the property on 69 Schneider Avenue, Highland Falls, NY, owned by Mr. Donal Ryan, and he has a couple neighbors here.

Bear with me because the Chairman could not be here, so you have the second stringer. We did, with your approval, I wasn't here, at the last meeting, begin talking about the Public Hearing, but technically, it was not formally opened as such. We will be doing that tonight. I need to swear you in. Please raise your right hand. Do you solemnly swear or affirm to give the whole truth and nothing but the truth so help you God?

MR. RYAN: I do.

MR. DEVEREAUX: Our Attorney, Ms. Terhune, will explain the details up to this point.

MS. TERHUNE: I do want to state for the Record that we do have an Affidavit of Publication and an Affidavit of Posting. I will note that the Public Hearing was duly Noticed and duly Published. I think the Applicant, at this point, might just want to run through the application for the Board and the Public.

MR. RYAN: It meets all the setbacks, the building. I am looking to put a two-family house up in place of what is there and take down the existing building. The way the zoning is written, and I know that you have changed a lot of the zoning this year or some of it, I am not sure if this was overlooked. I went in to Bruce, the Building Inspector, and went through it with him. I have all the setbacks: the front, the back, and the rear. I meet the square footage. The only thing I need, the way it is written in a sub-paragraph, is that I need 1,500 square feet per dwelling unit, which would make the lot size have to be 6,000 square feet. I have 5,000 square feet. I need a variance of 1,000 square feet.

MR. DEVEREAUX: You are the one that dictates the 1,500 square feet per unit, not us. Is it going to be 750, 750?

MR. RYAN: It is going to be 750, 750, because the way it is written, it can be 1,200 square feet, but you have to have 750 square feet on the first floor. This two-family house is the only one that requires this. The condominium you can get away with 600 and 600. Existing construction you can get away with 950 square feet total. This one you need 750 of a minimum on the first floor. So, if I wanted 750, I could technically put 450 on the second floor and make it smaller on the top, but it doesn't make sense to do that.

MR. McCORMICK: That one was recently reduced to the 750 for another project on Tobins Lane.

MR. RYAN: Yes, that is for an existing structure.

MR. McCORMICK: You are making a single into a two family. Now you have to establish two one family residences.

MR. RYAN: Well, the house that is there, it's hard to know if it was a one family or a two family. If you look at it, I'd say at one point, it was a two-family house because there is a door up in the back of it.

MR. McCORMICK: I never even knew the place was there. I drove up there to look at it, and I have lived here all my life, and I said where did this come from?

MR. RYAN: It's in bad repair, it needs to come down. I have done a few properties in town. I have renovated them, and if it was at all possible, keep them up.

MS. TERHUNE: There has been a good deal of confusion over the Code as it applies to this property. It does require 3,000 square foot per dwelling unit on the lot itself. This lot is pre-existing and it is non-conforming, but he will need a variance. That is really the only variance he would require - 1,000 square feet for the lot. The other somewhat confusing aspect is that in the R-4 District where this property is located, it basically allows two-family detached dwellings. That is confusing; however, I have conferred with the Building Inspector and I do agree with his analysis. I also checked with some accredited planners that I work with, a couple of them. It is detached because it is detached. It is not a town home; it is not attached.

MR. McCORMICK: It is a separate dwelling within a single structure.

MS. TERHUNE: Yes, it's a detached building with two dwellings in it. So, the Code could be clearer in terms of that definition, but that is an industry accepted definition of a two-family detached. So, it does meet the setbacks, other than it does require the 1,000 square feet.

MR. RYAN: The 1,000. Because the way it is written, you need 3,000 per dwelling unit. The lot size would have to be 6,000 square feet, and it is not. It is just a little over 5,000 square feet. I think it is 5,001 square feet, when you calculate it by exact numbers.

MS. TERHUNE: There are some issues with the application itself that I would like to point out. This is a sealed plan, so it has been sealed by an architect. When we asked you to revise the Bulk Table, it's correct, but it needs to be shown on this plan. This is a sealed plan, so you can't just change it, and not have the architect reseal the plan.

MR. RYAN: Is it not on the plan? Did he not change it on that plan?

MS. TERHUNE: Let me check.

MR. RYAN: Because, I think that is a new plan that we did for you.

MS. TERHUNE: No, he did not change it. I don't have a new plan, I have this.

MR. RYAN: He was supposed to put in the parking lot sizes on it.

MS. TERHUNE: He did that, 9 by 20. But he did not change the Bulk Table. All I have is this.

MR. RYAN: Well he has the 3000, 1,500. Yes, he did change it.

MS. TERHUNE: He has the lot area. See how he did it up here, it is not shown here.

MR. RYAN: Well, the lot area is 5,000, right?

MR. McCORMICK: Right.

MS. TERHUNE: Yes, but you're saying you don't need a variance.

MR. RYAN: No, down here it says he needs a variance.

MR. McCORMICK: Actually, we require 6,000.

MR. RYAN: Minimum dwelling unit is 3,000.

MS. TERHUNE: I understand that, but it is not clear and this isn't correct. So, you need to go back to him and tell him this is correct, but this isn't correct. I don't know how it happened. I got this.

MR. RYAN: This is the one that we originally did and they told us to change it. This is the first one.

MS. TERHUNE: I don't think so.

MR. RYAN: It is, because this is the new one.

MS. TERHUNE: Then this is wrong. I'm just telling you it's wrong.

MR. RYAN: How would you want this written?

MS. TERHUNE: This is actually correct. This says lot area: required 3,000 per dwelling, required 6,000, existing 5,000. You need 1,000. This is correct. Maybe he did it and didn't send in the new plan. I don't know.

MR. RYAN: I get it.

MS. TERHUNE: If the Board wants to proceed, we can make it a condition that we get the new seal tomorrow.

MR. RYAN: Somebody requested a set of plans with heights. I said if we weren't going to get a variance, there was no point in spending \$6,000-\$7,000 on a set of architectural plans.

MS. TERHUNE: That is an issue though. It is up to the Board. Architectural plans are not required. But you do have a bigger structure on the lot, even though it meets the setbacks. It says that the building height is less than 35 feet. It is completely up to the

Board, if you can visualize how it is going to sit on the lot, whether you want to see what it is actually going to look like. It is well within this Board's discretion to ask for that.

MR. DEVEREAUX: Can you give us a visual description?

MR. RYAN: It is a side-by-side house.

MR. DEVEREAUX: Where is the entrance going to be, in the center?

MR. RYAN: The entrance will come off the driveway, to the left-hand side as you are looking at the house. That's the only way you can do it because it was built into a hill.

MR. DEVEREAUX: I think there was concern that it was going to be a big box, or something like that.

MR. RYAN: No, I don't think so. It will be nice. It will be a lot better than what is existing there now.

MR. DEVEREAUX: I will agree with you on that.

MR. ISENBEEK: May I ask a question? In the notice that we got, I guess maybe just the way the notice was written, it was either confusing, or maybe we misunderstood it. It seemed to indicate to us that it was 3,000 square feet per living unit and that that this request was to make it 1,000 square feet per living unit.

MS. TERHUNE: No.

MR. RYAN: No, it is requesting a variance of 1,000 square feet.

MR. ISENBEEK: There is a big difference. Are we talking a two-family building or a five-family building? That is why I am here – NO. The place is a wreck now, completely. I want to get out of there. I can't even get a Realtor to show my house. They come up and they laugh, they go: what, are you kidding me, we can't do anything with this.

MR. McCORMICK: He needs a variance of 1,000 square feet.

MR. ISENBEEK: To make it a two family. That makes it clearer. We came in here thinking it was 1,000 square feet per unit. We can't park on the street now, it's a nightmare. I can't imagine it.

MR. RYAN: No, even the height levels, you can't go over 35 feet. The architect has to work within the parameters of what the town is allowing us to do. Where are you living, on the right?

MRS. ISENBEEK: We are the last house on the left.

MR. RYAN: I won't be half way up to your house.

MR. ISENBEEK: Any higher than it is now?

MR. RYAN: No, it won't be any higher than it is now. That is a good 35 feet where it is now.

MR. ISENBEEK: Okay. I'm feeling more at ease.

MRS. ISENBEEK: We have no parking now.

MR. RYAN: In order to meet the setbacks, we have to actually push the house back further off the street. A bigger space. It has to be pushed back more off the street.

MR. ISENBEEK: So, parking in front and back?

MR. RYAN: Yes.

MRS. ISENBEEK: When I saw the house, it looked like someone was checking it for termites with all the drill holes in it. And when you didn't come back, and the dumpster disappeared, I thought it looked worse than it did before.

MR. RYAN: When we got to that stage, I said to Bruce, we applied for the demo permits and realized that we can't save it. Even if we don't go through this, we will put back a single family. If I have to spend the money, in order to make it worth it for me, to drop \$250,000 on a house, it would make a lot more sense to make it a two family in an area that is zoned for two family than to go back and put a single-family house on it.

MS. TERHUNE: That's why you are in front of this Board.

MR. McCORMICK: Alyse, the required and allowable is 6,000 and the existing is 5,000, right? On the first line?

MS. TERHUNE: That is going to have to be changed. It is going to have to look like this.

MR. DEVEREAUX: Joe, we will make that a condition tonight.

MR. McCORMICK: Right.

MR. RYAN: That will be on the new full set of architectural plans on the cover page.

MR. DEVEREAUX: I think we need this for the application, because that is incorrect.

MS. TERHUNE: I think what the Board would require, if it approves this variance, is that it would be conditioned on the plans that you submit to the Building Department having the correct Bulk Table. Bruce would be given a copy of this resolution and it would say specifically the Bulk Table has to be corrected on a sealed architectural plan

from the architect. What you don't want is, if ten years from now these plans are pulled out, and they are wrong and they don't match with the resolution. Then everyone is confused.

MR. RYAN: That makes sense.

MS. TERHUNE: Then, it is up to the Board whether they feel it is important to see architectural. It does state that it will be less than 35 feet high.

MR. RYAN: So, the lot area on this plan. The one thing that is wrong on it is the required allowance should be 6,000 instead of 5,000. That is the only difference. I see it now that you point it out. It's actually pretty clear. That 5,000 needs to be changed to 6,000.

MR. DEVEREAUX: A yes versus a no.

MS. TERHUNE: The minimum required is really 1,200 feet as you point out. The existing doesn't really apply but the proposed is 1,500, correct?

MR. RYAN: Yes, the required is 3,000, which is correct. That's the minimum per dwelling unit.

MS. TERHUNE: No, it's not. I'm going to give this to you. The minimum per dwelling unit in square feet is 1,200. The existing is not applicable.

MR. RYAN: I know where he got confused with that because he thought that this was the square footage of the land.

MS. TERHUNE: No, that is up at the top. The lot area is the square footage of the land. So, when you go down to the minimum per dwelling unit, it is 1,200. Then you are proposing 1,500. So, you do not need a variance on that. The only variance you need is the lot area.

MR. RYAN: The lot area on the top, 6,500. So, we had it right the first time and I made him change it.

MS. TERHUNE: This was pretty much right, but I don't know where this came from. Bruce sent it to me, I think.

MR. RYAN: I did it and gave it to him and Bruce sent it back to me, and he said this is wrong and you have to change it.

MS. TERHUNE: This is correct.

MR. RYAN: I did these in the first packet. I did these and had them stamped. He said, make them big so it is easier for everybody to see them.

MS. TERHUNE: It will be part of the resolution, if the Board approves this, to correct the Bulk Table and the stamped plans.

MR. DEVEREAUX: Do you have any questions. Did we satisfy your curiosity?

MRS. ISENBEEK: It's been like eight months looking at this nightmare. I have complained to the Mayor and called anybody I could get a hold of.

MR. ISENBEEK: This was before you purchased it.

MRS. ISENBEEK: It's also been empty since you took it. But before that, nobody was maintaining the property. I called the mayor everybody came out. The bank finally sent somebody out. They came in and took down all the trash around the house, and everything that was growing, plus all my bushes and my trees that blocked our view from that place. Then when you came in, I said yea, and then you disappeared and left a real big nightmare for us to look at. You are going to fix it up.

MR. McCORMICK: Not fix it up, build it new.

MRS. ISENBEEK: Build it new. It won't be the nightmare that it is now.

MR. ISENBEEK: I guess if I have any questions, being there eight years and knowing the lay of the land, is there any issue with the concrete steps that come up to my driveway or the rock walls that go around that house?

MR. RYAN: I had the architect come up and we looked at it and he said no. We are actually going back away from that. We won't be touching that. The one retaining wall that's in the front up there is staying. If you meet me up there, I will show you. The walls on the basement are this thick, the existing stone wall. The architect said we won't be touching that. You won't put back anything as good as this.

MR. ISENBEEK: Right. I know how the land has slid off.

MR. RYAN: Bruce said that to me, as well. We have to do this because I don't want a landslide and you don't want to have a landslide. That is when we brought the architect in and we did the thing on the walls and measured the thickness of the walls.

MR. SULLIVAN: Mr. Chairman, I would like to say one thing: It is a pleasure to be here. You have Mr. McCormick, who has been in government for the last 40 years. Mr. Murphy who has worked for the village for probably the same amount of time. Mr. Devereaux has been on this Board since before I was, which was back in 1998.

The applicant has the opportunity to be aggrieved for a variance which is part of due process. You are here in a public venue allowed to ask questions about it. I would have to say it is a success. And it is a consolidated board. Thank you.

MR. DEVEREAUX: Mr. Sullivan is a member of the Town Board, and he is the Liaison between the Board and us, to explain his position. He is very knowledgeable. He grew up biting his teeth on this stuff. Mom was the clerk forever. Any other Board member comments?

MR. McCORMICK: No, I am ready

MR. MURPHY: No, I am very satisfied. I think in a perfect world that we would all love to see brand new single-family homes. But it's not always feasible and what is there is garbage. This will be an upgrade.

MR RYAN: It will be nice. I guarantee it. I pride myself on 30 years of construction here, and I can give you a list of houses that we have done, if you want to drive by to see them.

MR. McCORMICK: I expect that.

MS. TERHUNE: For the Record. I think what I am hearing is: This will enhance the neighborhood because it will be tearing down and taking away a dilapidated structure and replacing it with a new structure. The Board, I also recognize, is familiar with the site. Obviously, the Board has seen the site. You have done your site visit and you recognize the state the existing structure is in.

MR. DEVEREAUX: There are **five criteria** for an area variance.

- **Whether benefit can be achieved by other means feasible to applicant.**

MR. DEVEREAUX: That may not be applicable in this case.

MS. TERHUNE: It is in a sense that it is a pre-existing non-conforming lot. It had a structure on it so it is not as if he is creating a subdivision that is small and now putting a house on it that isn't conforming.

- **Undesirable change in neighborhood character or to nearby properties.**

MR. DEVEREAUX: No, it is going to be an improvement for sure.

- **Whether request is substantial.**

MR. DEVEREAUX: In a sense it is, but I don't think, at least I'm not, going to fuss about it.

- **Whether request will have adverse physical or environmental effects.**

MR. McCORMICK: The only thing I would be concerned about, and you had mentioned, is the hill sliding down and I am sure if it does, a retaining wall will be built.

MR. RYAN: The existing one that is there is adequate enough, and as you go back, the property levels out.

- **Whether alleged difficulty is self-created.**

MR. DEVEREAUX: One might say yes, because you are asking for something that we can give, of course, but you are creating something much better.

If approved shall grant minimum variance necessary and we may impose reasonable conditions.

Do we see any? Joe, you were concerned about parking.

MR. McCORMICK: No, it looks like they have achieved the parking. It looks like there is some green space available which is better than what I saw on the other one.

MR. DEVEREAUX: With that said, unless anyone has any other comments or thoughts, we will close the Public Hearing.

MR. ISENBEEK: One final question, so I have it all in my mind. How big is the building you are proposing in total square footage?

MR RYAN: 3,000 square feet. Two 1,500 square feet

MR. ISENBEEK: It's two family up and down each side?

MR. RYAN: Yes.

MR. DEVEREAUX: But it goes back obviously, not across.

MS. TERHUNE: Do you want to look at the plan again?

MRS. ISENBEEK: We are just worried about parking. We have a hard time, we are always afraid that if something happens to us, we will never get an ambulance up to our house. Parking is a real big issue on our street.

MR. RYAN: We have four designated parking spaces for that. There is off-street parking. There are four parking spaces off the street completely.

MR. McCORMICK: That's required.

MR. ISENBEEK: Two family, one each side, up and down. One parking around back, two spots, one parking up front, two spots.

MR. DEVEREAUX: Correct.

MS. TERHUNE: That is what is required under the Code. If it is a dwelling, two parking spots. So, he has four parking spots for two dwellings.

MR. DEVEREAUX: I find it kind of interesting, too, that the road is blocked going up. Because I pulled up and turned around. So, if necessary, somebody could park up there.

MRS. ISENBEEK: I always have to call and have them come back and lock it. If they don't lock that gate, I know it because you have the speeding tires going up that hill.

MR. ISENBEEK: It is a little nerve-wracking having vehicles go up that hill when it is icy. To have our house right next to it, we worry about somebody sliding off of that hill and off that wall and into our living room. As far as parking in that area, we have had some issues with people parking up on the hill, across the street from me, up on the icy area with their three-ton pickup truck facing right into my driveway, with two brand new vehicles. I have called the police and have been laughed at.

MR. DEVEREAUX: I didn't see any signs saying no parking up there.

MR. ISENBEEK: It was all overgrown. Now, they have come in cleared that area out. Parking in mud. Aside from, excuse me, but the mess that I have next to me, I now have a mud bog across the street from me, where, when children come down through the path, they are now sloshing through mud and falling into the street. It's a mess.

MRS. ISENBEEK: Also, with the snowplow, because I am parking there, he can't drop his plow and make that turn. By the time he turns around, he is a little past our driveway and he drops the plow. So, the whole street there for the kids next day is all icy.

MR. DEVEREAUX: That goes beyond the scope of this Board. I can empathize with you.

MR. ISENBEEK: I bring that up because parking up on top was mentioned. That is not a good idea.

MR. McCORMICK: Actually, we have three streets like that: Liberty Street, one on Prospect, one over on South Street. They are there, but they are not streets.

At 7:30 P. M., a motion was made to Close the Public Hearing.

Motion: Mr. McCormick Seconded: Mr. Murphy Approved

MS. TERHUNE: I would advise the Board that this is a Type II Action under the State Environmental Quality Review Act. So, there is no requirement to actually address SEQRA because it is a Type II Action. I will put that in the resolution. The only condition I thought I heard the Board say was to update the Bulk Table, is that correct?

MR. DEVEREAUX: Yes.

A motion was made to approve the area variance for 69 Schneider Avenue, Highland Falls, NY.

Motion: Mr. McCormick Seconded: Mr. Murphy Approved

MS. TERHUNE: I will do the resolution that will indicate that this is what the Board wants, and then you will get the revised plans to Bruce, and he will give you the Building Permit.

MR. RYAN: Thank you very much.

At 7:33 P. M., a motion was made to adjourn the meeting.

Motion: Mr. McCormick Seconded: Mr. Murphy Approved

Respectfully submitted,

**Fran DeWitt
Secretary to the ZBA**

**The next Consolidated Zoning Board of Appeals meeting is
Wednesday, April 17, 2019**